INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	5
Conclusion	10
Appendix	11

CITATIONS

Cases:

Browning v. *Browning*, 89 Kan. 98	7
Callow v. *Thomas*, 322 Mass. 550	8-9
Cummings v. *United States*, 34 F. 2d 284	9
Hartman v. *Valier & Spies Milling Co.*, 356 Mo. 424	6
Jordan v. *Missouri & Kansas Telephone Co.*, 136 Mo. App. 192	8-9
Ross v. *Bryant*, 90 Okla. 300	6
Stone v. *Stone*, 193 Okla. 458	6
Whitney v. *Whitney*, 192 Okla. 174	6

Statutes:

National Service Life Insurance Act of 1940, 54 Stat. 1008, 1009, Sec. 602(g), 38 U.S.C. 802(g)	3, 11
38 U.S.C. 505a	6
Gen. Stat. of Kansas, 1935, Sec. 23-106	3, 11

Miscellaneous:

2 Bishop, *Marriage, Divorce, & Separation* (1891 ed.):	
§ 1596	8
§ 1601 *et seq.*	9
Note, 2 ALR 2d 657	9
Veterans Administration Regulations, 38 CFR Cum. Supp. § 2.1049; 38 C.F.R. 1944 Supp. §10.3453	6

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 55 Misc.

HELEN MAXINE CASTOR, PETITIONER

v.

UNITED STATES OF AMERICA, RAY W. CASTOR, AND MRS. EMMA CASTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Western District of Missouri sustaining respondents' motion for judgment on the pleadings (Tr. 55) is reported at 78 F. Supp. 750. The opinion of the Court of Appeals for the Eighth Circuit (Tr. 74) is reported at 174 F. 2d 481.

JURISDICTION

The judgment of the Court of Appeals was entered on May 10, 1949 (Tr. 79). A petition for

rehearing was denied on June 9, 1949 (Tr. 92). The petition for a writ of certiorari was filed on July 18, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

In 1935, petitioner married Price in Kansas. In 1940, while still married to Price, petitioner married Castor in Oklahoma. On May 22, 1943, National Service Life Insurance Certificate No. 11,479,233, with petitioner named as wife and beneficiary, was issued on the life of Castor. On July 10, 1943, while the policy was in force, Castor died in service. On November 29, 1943, a Missouri court annulled the prior Kansas marriage of petitioner and Price. The question presented is whether, in these circumstances, both courts below erred in holding that petitioner was not the insured's widow on the date of his death within the meaning of Section 602(g) of the National Service Life Insurance Act of 1940, 38 U. S. C. 802(g).

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix, *infra,* p. 11.

STATEMENT

Petitioner, on November 10, 1944, filed a claim with the Director of Insurance of the Veterans Administration for the proceeds of National Service Life Insurance Policy No. 11,479,233 issued on the life of Arley O. Castor, in which policy petitioner,

Helen Maxine Castor, was designated as wife and beneficiary. The claim was disallowed on the ground that petitioner was not the widow of Arley O. Castor at the time of his death within the meaning of Sec. 602(g) of the National Service Life Insurance Act of 1940,[1] and that the insured's parents, Ray W. Castor and Emma Castor (respondents herein), were the legal beneficiaries. This action was thereafter instituted against the United States to recover the proceeds of the policy. Upon the order of the District Court, the insured's parents were made third-party defendants.

The facts which are undisputed or stipulated by the parties are as follows:

On September 4, 1935, petitioner, under the name of Helen Maxine Pettijohn, was married to Frank William Price at Troy, Kansas. Both petitioner and Price were domiciled in Missouri. Petitioner, who was 17 years of age at the time, did not procure the parental consent required by Sec. 23-106 of the Gen. Stat. of Kansas, 1935 (*infra*, p. 11) (Tr. 2, 41). On June 10, 1940, although the Kansas marriage had not been dissolved or annulled by court decree and although Price was still living, petitioner, under the name of Miss Helen Price, married Arley O. Castor, the insured, in Cleveland

[1] Section 602(g) of the National Service Life Insurance Act of 1940, 54 Stat. 1008, 1009, 38 U. S. C. 802(g), provides that "The insurance shall be payable only to a widow, widower, child * * *, parent, brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided * * *."

County, Oklahoma, and thereafter lived with him until his death, while in service, on July 10, 1943 (Tr. 8, 11, 42). Price is still alive. On November 12, 1943, petitioner brought an action in the Circuit Court of Buchanan County, Missouri, to annul her marriage to Price because of her minority in 1935, and on November 29, 1943, the court entered a decree of annulment (Tr. 67). This suit followed the disallowance of petitioner's claim by the Veterans Administration.

Upon these facts, respondents moved for judgment on the pleadings. The District Court sustained the motion. The court concluded that, as a matter of Kansas law, petitioner's marriage to Price in 1935 had been valid until dissolved by court decree. Therefore, her marriage to the insured was void. "At the time of his death she was not his legal wife and therefore is not entitled under the Act to the proceeds of the certificate." (Tr. 61). On appeal, the Court of Appeals affirmed, stating "If she was not Castor's wife on [the date of his death, July 10, 1943], she is not his widow now, because, for present purposes at least, the insurance matured on the date of his death and the marital relationship must have existed at that time. * * * The annulment decree of November 29, 1943, was therefore ineffective to change plaintiff's pre-existing marital status. * * * The Kansas marriage of 1935 being valid, plaintiff was unable

to contract another valid marriage so long as the former was undissolved by death or court decree, * * * Plaintiff was therefore incompetent to contract a valid marriage to Castor in Oklahoma in 1940, her purported marriage to him was void, and she therefore cannot now be his widow." (Tr. 76, 77, 78).

ARGUMENT

Contrary to the suggestion of petitioner, no question is presented here of a collateral attack in a federal court upon a judgment of a court of the State of Missouri. In this litigation, the Government concedes that, as a result of the Missouri decree of annulment, the Kansas marriage of petitioner and Price in 1935 has been held void. The question raised is simply whether that decree, entered on November 29, 1943, has the retroactive effect of making petitioner and the insured husband and wife at the time of the insured's death on July 10, 1943, although, under Oklahoma law, petitioner and the insured were not lawfully married at his death. The question is one of local law. The District Court for the Western District of Missouri and the Court of Appeals for the Eighth Circuit, presumably well versed in Missouri law, have both concluded that the Missouri decree, which annulled the Kansas marriage, has no retroactive effect upon the subsequent intervening Oklahoma marriage. We submit therefore that further review is not warranted.

1. Under Oklahoma law, which is here made controlling by Veterans Administration Regulations,[2] it is unquestioned that the marriage between petitioner and the insured on June 10, 1940, in Oklahoma, was void if either party had previously contracted a valid marriage, undissolved by death or court decree. See *Whitney* v. *Whitney,* 192 Okla. 174, 175, and cases there cited. The validity of the Oklahoma marriage depends therefore upon the effect of petitioner's Kansas marriage to Price in 1935. The law of Kansas[3] as interpreted by the Supreme Court of Kansas is that the marriage of a minor without the consent of parents, while prohibited, is not void and is not grounds for annul-

---

[2] The Regulations of the Veterans Administration issued under the National Service Life Insurance Act provide that "All marriages shall be proved as valid according to the law of the place where the parties resided at the time of marriage, or at the time and place where the parties resided when rights to compensation or pension accrued." 38 CFR Cum. Supp. § 2.1049; 38 CFR 1944 Supp. § 10.3453. Cf. 38 U. S. C. 505a. In so far as the record reveals, Oklahoma, the place where the marriage occurred, was also the domicile of the insured at the time of the marriage and the marital domicile after the marriage (Tr. 42).

[3] Under Oklahoma law, it would appear that the validity of the Kansas marriage is determined by the law of the domicile of the parties. See *Ross* v. *Bryant,* 90 Okla. 300, 302. The domicile of petitioner and Price at the time of the Kansas marriage was Missouri (Tr. 2, 41). And the law of Missouri is that the validity of a marriage of Missouri domiciliaries depends upon the law of the place of the marriage. See *Hartman* v. *Valier & Spies Milling Co.,* 356 Mo. 424, 432. Therefore, the validity of the Kansas marriage is controlled by Kansas law. However, it is unnecessary to decide this question since the law of Oklahoma on the question of capacity to contract marriage is the same as Kansas. See *Stone* v. *Stone,* 193 Okla. 458, 459.

ment. In *Browning* v. *Browning*, 89 Kan. 98, that court said (*Id.* at 99, 101):

> * * * The statute does not declare that the marriage of a minor entered into without the consent of the parent or guardian is void, and, in the absence of a provision to that effect, such legislation is construed as intended to prevent such marriages as far as possible, but not to avoid them if they are once entered into. * * * In forbidding the issuance of a license for the marriage of a minor without the consent of the parent or guardian, the Legislature is to be regarded, for the reasons already indicated as intending to prevent minors from the improvident exercise of the power to enter the marriage relation, rather than to deprive them of the capacity to do so. * * *

The Kansas marriage being valid, it is clear that petitioner and the insured were not lawfully married in Oklahoma in 1940. It follows therefore, excluding the possible retroactive effect of the Missouri decree, that petitioner is not the insured's lawful widow.

2. Although the Missouri decree of annulment may avoid the Kansas marriage *ab initio*,[4] it does

[4] The decree of the Missouri court reads as follows: "* * * Wherefore, it is ordered, adjudged and decreed by the court that the alleged marriage contract entered into between the plaintiff and the defendant, on or about the 4th day of September, 1935, be, and the same is hereby declared null and void and of no effect, and that plaintiff be restored to all the rights and privileges of an unmarried person." (Tr. 67). There is nothing on the face of the decree to indicate clearly whether the Missouri court considered the Kansas marriage

not relate back as to all intervening transactions.[5] As shown above, the Kansas marriage was valid and subsisting until annulled. In these circumstances, it has been held by the Missouri courts that the voiding of the prior marriage *ab initio* does not, as to subsequent intervening marriages, retroactively change the status of the parties. It "cannot have the effect of changing a situation which prevents a valid marriage of one of the parties with another person into a situation which permits a marriage." *Jordan* v. *Missouri & Kansas Tele-*

---

to have been void or merely voidable under Kansas law. Other than the inferences which petitioner draws from the decree (Pet. p. 21), petitioner has made no showing that under the law of Missouri, a decree declaring a marriage "null and void" is to be construed as a declaration that the marriage was void rather than voidable. On the other hand, the decree states that plaintiff is "restored" to her rights as an unmarried person. In view of the opinions of both courts below, courts presumably familiar with the law of Missouri, it would appear merely that the decree annuls the Kansas marriage.

The further question arises, however, whether the decree makes the marriage void *ab initio* or merely void from the date of the decree. In general, an annulment is distinguished from a divorce in that it is not a dissolution of the marriage but is a judicial declaration that no marriage has ever existed. Therefore, we assume that the decree voided the marriage *ab initio*. See *Callow* v. *Thomas*, 322 Mass. 550, 553, and cases there cited; 2 Bishop, *Marriage, Divorce, & Separation* (1891 ed.) § 1596. That is not to say, however, that the marriage was void in the absence of the decree.

[5] Cf. *Callow* v. *Thomas*, 322 Mass. 550. In that case, plaintiff and defendant were married on August 6, 1944. On November 9, 1944, while riding as a "gratuitous passenger" in an automobile owned and operated by defendant, plaintiff was injured by reason of defendant's negligence. On June 28, 1945, upon the petition of plaintiff to annul the marriage because of defendant's fraud, the marriage was declared to be "null and void" (*ab initio*). Two months later, plaintiff began this action to recover for her injuries. The question for decision was whether a wife after the marriage has been annulled

phone Co., 136 Mo. App. 192, 201.[6] We submit therefore that the Missouri decree, as interpreted by Missouri courts,[7] did not retroactively transform the void Oklahoma marriage into a valid one, and that the courts below did not err in holding that petitioner is not the widow of the insured. Cf. *Cummings* v. *United States*, 34 F. 2d 284, 286 (D. Minn.).

---

can maintain an action against her husband for a tort committed during coverture. [In Massachusetts no action can be maintained by either spouse for a tort committed by the other during coverture.] The court held that plaintiff is not entitled to recover. "The better rule, we think, is that in the case of a voidable marriage transactions which have been concluded and things which have been done during the period of the supposed marriage ought not to be undone or reopened after the decree of annulment." *Id.* at 555. See also 2 Bishop, op. cit. *supra*, § 1601 *et seq; Note*, 2 ALR 2d. 637.

[6] In that case, plaintiff, claiming to be Jordan's widow, brought an action for his wrongful death. Defendant denied that plaintiff was Jordan's widow and asserted that at the time of her marriage, Jordan had a living wife—Ethel—from whom he had not been divorced. At the trial, it was found that Ethel had previously been married to Meskill. In 1902, she had obtained an interlocutory decree of annulment on the ground that Meskill had concealed from her the fact that he had a loathsome disease. Prior to the entering of a final decree of annulment in 1903, Ethel married Jordan. Some months later, Jordan married the plaintiff. The court held that Jordan had not been lawfully married to Ethel and that plaintiff was his widow. Since the marriage between Ethel and Meskill was valid until annulled, the marriage between Ethel and Jordan prior to that annulment was void.

[7] If, under Missouri law, the decree did have a retroactive effect, it would then be pertinent to inquire whether Oklahoma would give it the same effect. There has been no showing by petitioner that Oklahoma law permits retroactive validation of a void Oklahoma marriage.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
BENJAMIN FORMAN,
Attorneys.

AUGUST, 1949.

APPENDIX

Section 602(g) of the National Service Life Insurance Act of 1940, 54 Stat. 1008, 1009, 38 U. S. C. 802(g) provides as follows:

> The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

Section 23-106 of the Gen. Stat. of Kansas, 1935, provides in pertinent part as follows:

> * * * No probate judge shall issue a license authorizing the marriage of any male person under age of twenty-one years, or female person under the age of eighteen years, except with the consent of his or her father, or, if he be dead or incapable, or not residing with his family, his or her mother or guardian, as the case may be, if she or he have one, which consent, if not given at the time in person, shall be evidenced by a certificate in writing subscribed thereto and duly attested. * * * [L. 1867, ch. 84 § 5; G. S. 1868, ch. 61, § 5; L. 1905, ch. 302, § 1; L. 1913, ch. 224, § 2; April 30; R. S. 1923, § 23-106.]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 948729 82